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Supreme Court, U.S.
FILED

No. 09-44

MAY 2 - 2009

OFFICE OF THE CLERK

In the Supreme Court of the United States

RAMON CANO

Petitioner

v.

HANSON AGGREGATES OF AZ

Respondent Employer

On Petition For Writ Of Certiorari
From the Arizona Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Ramon Cano
Counsel of Record
None
19801 N. 6th PL
Phoenix, AZ 82504
623 587 1444

Questions Presented For Review

Why did Hanson not present any records indicating what every employee is doing at any given time?

Why did the manager of Hanson Mr. Todd Hall no present himself in person to declare at the court?

Why was my cases denied based on the fact that I did not report the injury on time when the insurance lawyer said unsophisticated people could not know what they had until they are seen by a specialist?

List of Parties

Supreme Court of Arizona
1501 W. Washington
Phoenix AZ, 85007

Arizona Court of Appeals
1501 W. Washington
Phoenix AZ, 85007

Industrial Commission of Arizona
800 W. Washington
Phoenix AZ, 85007

Cross & Lieberman, P.A.
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Table of Authorities

Cases: None Used Page Number

Other

Opinions Below

No opinions were given about this case from any of the inferior courts.

Jurisdiction

The date on which the highest state court decided my case was the Arizona Court Of Appeals

A copy of that decision appears at Appendix .

A timely petition for rehearing was thereafter denied on the following date: 24, of March 2009 and a copy of the order denying rehearing appears at Appendix .

An extension of time to file the petition for a writ of certiorari was granted to and including on 8th of April, 2009 to 7th of May, 2009

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions Involved

There were no constitutional and Statutory Provisions admitted into this case.

Statement of the Case

The main question of the court would be if the petitioners injury was indeed related to his work. The petitioner worked for Hanson roughly 16 years. During this time he worked in as Labor, Maintenance, Crusher Operator, Hull Truck Operator, Loader Operator and any other place the company wanted me. Defendant Employer and Defendant Carrier Cross Lieberman, P.A, said I was working 50 to 60 hours a week. This contributed to the degenerative physical condition I'm suffering. During the time the petitioner worked at Hanson he felt what he thought to be tired muscles but the pain was not that extreme to the point that he had to see a doctor. After the petitioner was terminated his pain still existed so he went to apply to Access Medical Insurance to help him pay for the doctor fee, this process took to long and finally he was forced to see a family doctor at his own expense. He was later transferred Dr. Glen Blair, a specialist in this type of back pain. Dr. Blair said that this type of degenerative disc disease was likely caused by his relation to his work. He also acknowledge that it would be fair to say that the applicant has degenerative disc disease because he is genetically coded to have that disease, which is highly improbable seeming as he is the only person in his family to have this injury. He told the petitioner that he should file a industrial commission case. Where Todd Hall, Manager of the plant, was suppose to testify to the court but Mr. Hall failed to show up. The case however was denied.

He went on to have back surgery in May of 2007. The petitioner later appealed that case to the Arizona Court of Appeals. Mr. Schroeder testified that the petitioner only worked 10 to 25% of the day outside of the tower. Even though they show no records indicating when he left the tower or when he switched jobs he did at the plant. It is also convenient that Hanson could not find the records stating what I did for the company knowing that every company should know what every employee is working on at that time. In conclusion this simply means it is Jim Schroeder, who works for Hanson against the petitioners word containing no actual evidence. Where it was denied a second time.

Afterwards he filed in a timely matter to the ASC Arizona Supreme Court. However the petition was denied. The main defense the defendant has is that the petitioner did not report his injury on time. Even though Dr. McLean claimed that unsophisticated people normally do not know what they have until seen by a specialists. Which is what happened in this case. I have been unable to work due to the pain my back causes me. I have been up to date on all my medical appointments yet there is no successful treatment. And Social Security has labeled me disabled.

Reasons for Granting the Petition

I believe the inferior courts did not consult my case well and did not answer the loop holes in which my case was left in. The lower courts were erroneous in the way that they did not follow through with highly important facts but yet choose to simply ignore them all completely leaving me totally short of even having a fair trial in my case. Like similar cases we are forced to ask ourselves if an immigrant from Mexico would be able to understand that his injury was indeed work related and not just what I thought to be tired muscles. This case deserves review because it compels to answer the question whether after 16 years of heavy construction work resulted in me being labeled disabled.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ramón Cano

Date: 07/30/09

IN THE COURT OF APPELS
STATE OF ARIZONA
DIVISION ONE

RAMON CANO,	) No. 1 CA-IC 08-0022
Petitioner	) Department C
v.	)
THE INDUSTRIAL COMISSION OF ARIZONA,	) ICA NO. 20070-320056
Respondent,	) CARRIER NO. WC-608000000.
HANSON AGGREGES OF AZ,	)
Respondent Employer,	)
LIBERTY MUTUAL INSURANCE CO,	) Order
Respondent Carrier.	)

The above-mentioned matter was due to submitted to the court. The court has this day rendered its Memorandum Decision.

It is ordered that the Memorandum Decision be filled by the Clerk.

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHERIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111 (c); ARCAP 28 (c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPELS
STATE OF ARIZONA
DIVISION ONE

RAMON CANO,	)	1 CA-IC 08-0022
	)	
Petitioner	)	
	)	Department C
v.	)	
	)	MERMORANDUM
THE INDUSTRIAL	)	DECISION
COMISSION OF	)	(Not for Publication
ARIZONA,	)	Rule 28, ARCAP)
	)	
Respondent,	)	
	)	
	)	
HANSON	)	
AGGREGES	)	
OF AZ,	)	
	)	Respondent
)		
Employer,	)	
	)	
LIBERTY MUTUAL	)	
INSURANCE CO,	)	
	)	
Respondent Carrier.	)	
_____	)	

Special Action—Industrial Commission

ICA CLAIM NO. 20070-320056

CARRIER NO. WC-608000000

James A. Overholt, Administrative Law Judge

AWARD AFFIRMED

Ramon Cano — Phoenix
In Propria persona

Laura L. McGrory, chief Counsel — Phoenix
The Industrial Commission of Arizona
Attorney for Respondent
Cross & Lieberman, P.A>
By Lawrence H. Lierberman
Attorneys for Respondent Employer and Carrier

WINTHROP, Presiding Judge

¶1 Petitioner Ramon Cano ("Claimant") seeks special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review of non-compensability for his back condition (ruptured disc) that ultimately required surgery.

Claimant argues on appeal that there was insufficient evidence to support the Administrative Law Judge's ("ALJ") findings that the evidence failed to establish that Claimant sustained an injury arising out of and in the course of employment. For the following reasons, we affirm the award and decision upon review.

JURITICTION AND STANDARD OF REVIEW

¶2 This court has jurisfiction pursuant to Arizona Revised Statues ("A.R.S." sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rules of Procedure for special actions 10. In reviewing findings and awards of the ICA, we defer to the ALJ's factual findings, but review questions of law de novo. Young v. Indus. Comm'n 204 Ariz. 267, 270, ¶ 14, 63 p.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding this award. Lovich v. Indus. Comm'n, 202 Ariz. 102, 105, ¶ 16, 41 p 3d 640, 643 (App. 2002).

PROCEDURAL AND FACTUAL HISTORY

¶3 At the time of this alleged injury, Claimant had worked for the respondent employer, Hanson Aggregates Az, Inc. ("Hanson"), for approximately sixteen years[1]. Claimant worked as a crusher operator during his last few years at Hanson[2]. On June 19, 2006, Hanson terminated Claimant's employment based on its review of Claimant's work history.

¶4 Due to his complaints of low back pain and a numb leg, Claimant contacted the Arizona Health Care Cost Containment System on September 1, 2006. Since Claimant could not obtain an appointment, he sought treatment from a private doctor. In December, Dr. Ricardo Celeya examined Claiment, ordered a MRI scan, and referred Claimant to Dr.Glen Bair, an orthopedic specialist.

¶5 On January 11, 2007, Dr. Bair examined Claimant. Dr Bair noted in the "history" of illness section of his report that Claimant has developed severe left leg pain associated with his work. Dr Bair also stated that the MRI report indicated that

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[1] The worker's report of injury originally noted Claimant's date of injury as August 30, 2006; however, an order nunc pro tunc corrected the date of injury to June 19, 2006.

[2] A crusher operator is a mainly sedentary job where the operator uses a control panel in a tower; however, at times, it requires the operator to exit the tower and engage in heavy work on the plant's floor.

Claimant had "an extruded fragment at (the L4-5 level) with caudal migration with moderate canal stenosis and some exit foraminal encroachment." Dr Bair concluded Claimant had sciatic pain secondary to extruded fragments at the L4-5 level. On May 31, 2007, Claimant underwent surgery performed by Dr. Edward Song, an orthopedic spinal specialist.

¶ 6 On January 22, 2007, Claimant filed a worker's report of injury. The carrier issued a notice of claim status denying the claim, and Claimant filed a request for hearing with the ICA, arguing that his back "condition (was) related to the repetitive work activity he performed for (Hanson) prior to his termination."

¶ 7 On August 8, 2007, Dr Terry McLean, an orthopedic surgeon with fellowship training in Spinal surgery, performed an evaluation on Claimant at the request of Hanson and its insurance carrier. That evaluation consisted of a review of all prior relevant medical and surgical records, including radiology studies, and physical examination of Claimant. As a result of the evaluation, Dr. McLean diagnosed Claimant with a lumbar disc herniation at the L4-5 level, radiculopathy at the L5 level, and multilevel lumbar degenerative disc disease. Dr McLean also concluded that, to a reasonable degree of medical probability neither the underlying condition nor the need for the corrective surgery was caused or contributed to by Claimant's work activity with Hanson.

¶8 After hearing testimony at four scheduled hearings, the ALJ entered an award denying Claimant's claim of gradual industrial injury. Claimant timely requested administrated review, and the ALJ summarily affirmed his award. Claimant next brought this appeal.

DISCUSSION

¶9 Claimant first agues that the ALJ erred in its findings that the Claimant was employed as a mostly sedentary crusher operator by Hanson on the relevant dates. Claimant contends his back problems was gradual injury that occurred over time and that his entire work history with Hanson shows substantial strenuous physical labor which contributed to deterioration of his back condition. Claimant requests that we "review the case and explore" the sufficiency of the findings of the ALJ. "It is the duty ofS the (ALJ) to resolve all conflicts in the evidence and to draw inferences from that evidence. When more that one inference may be drawn, the (ALJ) may choose either, and will not reject that choice unless is wholly unreasonable." Johnson Manley Lumber v. Indus. Comm'n 159 Ariz. 10, 13, 764 p.2d 745, 748 (App. 1998) (citation omitted).

¶ 10 We acknowledge Claimant's argument that the record contains evidence that he engaged in more heavy lifting during the course of his employment than Hanson portrayed. At the scheduled hearing on October 26, 2007, Claimant testified that over the past sixteen years, he worked as a crusher operator, a loaded operator, a whole truck operator, and engaged in several repair in maintenance activities. Claimant further testified that every day he engaged in "heavy physical work," that consisted of bending over and picking up rocks with his hands or a shovel for more than an hour at a time. All of that work, per Claimant, led to his experiencing back pain while employed as a crusher operator in 2006; however, Claimant did not file an official injury report with Hanson because he thought that his back pain was caused by "tired muscles" after working approximately 50 hour work weeks. Claimant testified, however, that he did tell, Todd Hall, Claimant's supervisor, about his back pain.

¶11 Jim Schroeder, an area manager, testified on behalf of Hanson. Mr. Schroeder testified that the main functions of Claimant's job as a crusher operator consisted of walking around the plant to make sure that there are no dangerous conditions and using a push-button panel in the operator's tower to start and stop the conveyor belts and crusher. In the event that a conveyor belt or crusher stopped working, Claimant would exit tower to shovel and lift rocks obstructing the machines normal operation. These shoveling and maintenance activities might account for approximately 2.5 hours of Claimant's day; however, stoppages requiring Claimant to leave the tower did not occur every day. Mr. Schroeder testified that Claimant never reported an Industrial injury.

Finally, Mr. Schroeder also testified that numerous employees complained about Claimant, and Hanson decided to terminate Claimant's employment base in his poor job performance.

¶12 The ALJ recognized the conflict in testimony between Claimant and Mr Schroeder, and resolved the conflict against Claimant.

¶13 Conflicting evidence was also presented by the two expert witness, If there is a conflict in expect testimony, it is the responsibility of the ALJ to resolve that conflict. Stainless Specialty Mfg. Co. v. Indus. Comm'n, 144 Ariz. 12, 19, 695 p.2d 261, 268 (1985). Further as mentioned above, "(w)e will not disturb the resolution of the (ALJ) unless it is wholly unreasonable." Id. At 19, 695 p.2d at 268; see also Johnson Manley Lumber, 159 Ariz. At 13, 764 p.2d at 748.

¶14 Here, Dr Bair testified that the Claimant has underlying degenerative disc disease in his back, and opined that, to a reasonable degree of medical probability, Claimant's work activities contributed to an exacerbated his degenerative disc disease. Dr. Bair acknowledged that he sees doctors, accountants, and others that have sedentary occupations with similar findings of degenerative disc disease. Regardless, Dr. Bair opined that Claimant's extruded disc likely existed in August or September of 2006, and that a normal disc would not rupture unless there is "(some) extreme force" exerted.

¶15 Conversely, Dr. McLean testified that it is his opinion to a reasonable medical probability that the Climant's work activities at Hanson did not alter the course of Claimant's preexisting multilevel lumbar degenerative disc disease. Dr. McLean, focused, in part, on the fact that the Claimant did not seek medical attention until December 14, 2006, and did not claim the existence of a work-related injury until January 22, 2007. The doctor further opined that if Claimant sustained a herniated disc at the L4-5 level while engaged in a work-related activity, as Dr Bair suggested, Claimant would have immediately experienced symptoms and would have likely not only reported them to Hanson, but also sought immediate medical attention. As Mr. Shroder testified, Claimant never reported an injury while working at Hanson. Further, even though such injury of necessity would have had to occur before June 19 in order to be work-related, Claimant did not initiates any request for medical evaluation before September (at the earliest) or December (at the latest).

¶16 Based on the conflicting medical testimony, it was not unreasonable for the ALJ to adopt Dr. McLean's opinion. We therefore concluded that there was substantial evidence to support the ALJ's findings that the Claimant's back condition was not related to a compensable industrial injury. See Price, v. Indus. Comm'n 23 Ariz. App. 1, 4, 529 p.2d 1210, 1213 (1975) ("A))n appellate court will affirm an award of the Industrial Commission when there is substantial evidence to support the Commission's decision.").

CONCLUSION

¶17 For the reasons set forth above, we affirm the ALJ's award and decision upon review.

"s/"

LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:
"s/"

PATRICK IRVINE, Judge

"s/"

PHILIP HALL, Judge

Supreme Court
STATE OF ARIZONA

402 Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3231

TELEPHONE (602) 452-3396

March 23, 2009

RE: CANO v ICA/HANSON AGGREGATES OF AZ/LIBERTY MUTUAL

Arizona Supreme Court No. CV-08-0395-PR
Court of Appeals Division One No. 1-CA-IC 08-0022
Industrial Commission of Arizona No. 20070-320056
Insurance Carrier No. WC-608000000

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 23, 2009, in regard to the above reference cause:

ORDERED: Petition for review by the Supreme Court = DENIED.

A panel composed of Vice Chief Justice Berch, Justice Ryan, and Justice Bales participated in the determination of this matter.

Record returned to the Court of Appeals, Division One, Phoenix, this 23rd day to March, 2009.

Rachelle M. Resnick, Clerk

TO:
Ramon Cano
Laura L McGrory, Director, Industrial Commission of Arizona, Phoenix office
Lawrance H Lieberman, Cross & Lieberman PA
West Publishing Company
Lexis Nexis
Philip G Urry, clerk, Court of Appeals, Division One, Phoenix
mjl

1-19-99

To whom it may concern,

I have worked with Ramon for eight years. He has always impressed me with his work ethic and effort. He is a great example of a first generation immigrant. Hard work above and beyond any typical employee.

Ramon is responsible for the care and maintenance of our Deer Valley Redi-Mix plant. He is consciencious – very reliable.
He works an average of 65-70 hrs per week.

Also I would like to say I trust Ramon-no only with the amount of manies on premises, but with the safety of our drivers and the equipment of operators, he is directly responsible and Im confident in his abilities and personal concern. We here at Pioneer are lucky to have him. He represents the best of our working force.

Sincerely "s/"

(2)

No. 09-44

In The

Supreme Court of the United States

RAMON CANO

Petitioner(s)

v.

HANSON AGGREGATES OF AZ

Respondent(s)

On Petition For Rehearing To
The United States Supreme Court

PETITION FOR REHEARING

Ramon Cano
Counsel of Record
My Firm
19801 N. 6th PL
Phoenix AZ, 85024
(623) 587-1444

The Reason my petition should be reheard

This petition should be reheard because I feel it was strongly misjudged. I feel that sufficient questions where brought forward to the court that need to be answered before my case can be brought to justice. Being a first generation immigrant to work for Hanson for sixteen years speaks for my integrity. The only real defense the insurance lawyer seems to cling too is that I didn't report my injury while I was working, but this can be explained with the fact that I was unaware that my injury was caused by me working construction. I thought it was tired muscles or over exhaustion. The insurance company says that I spent most of my time in the crusher (an operating machine one sits in to crush the rocks) and very little actual labor work. I disagree with this statement that could be easily solved by showing the records of what each employee did during there work shift. You would think that such a big company like Hanson would keep records or time sheets of what each employee was doing during there shift or who

was operating what at any given time. But the insurance lawyer failed to supply any such indicator which is another problem with my case being judged. Another point the insurance lawyer makes is why did I not go to a doctor sooner if the pain was so overwhelming? Well at the time I didn't have insurance and I applied for APIPA. This process took six months to which afterwards I was forced to pay to see a doctor out of my own pocket because the process was taking too long. From there I was sent to see a specialist on back problems who then told me that my back problem was caused by work and I should file a claim with the company. That is when I learned that my back problems resulted from work and hence forth filed a claim. I also have testimonies from people that say I was in pain from my back while I was working for Hanson and up in till this present moment. As you can easily tell these are the problems I have with my petition being denied. All the answers to the questions the insurance lawyer asks are here. I am permanently disabled and am forced to ask for

social security payments because I can no longer work. I would not have gone to all this trouble if I didn't think I was right. I still have faith in the justice system of the United States to simply review my case and ask the right questions. Thank you for your time.

CERTIFICATE OF COMPLIANCE

No. 07·

Ramon Cano,

Petitioner(s)

V.

My Opponent(s)

Respondent(s)

As required by Supreme Court Rule 44(h), I certify that the petition for a rehearing contains 450 words, excluding the parts of the petition that are exempted by Supreme Court Rule 44(d).

I certify this Petition for rehearing is in good faith and not to delay as required by rule 44.2
I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCT/29, 2009

Ramon Cano